

SUPERIOR COURT
BARNSTABLE, MA

FILED JUL 16 2019

CIV. 1972CV

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT DEPT.
NO. 1972CVWilliam Marston and
Joseph Bento

Plaintiffs

v.

Terrence J. Hunrie, Kenneth
Foreman, Edward Van Kueren,
Gerald Potamis, Robert Dugan,
James T. Morse, and
Mary Barry as They
Are Members of and Are
Collectively the Falmouth
Zoning Board of Appeals, and
Locustfield, LLC

Defendants

COMPLAINT

1. This action involves an appeal by Plaintiffs of a decision of the Town of Falmouth Zoning Board of Appeals to issue a comprehensive permit under M.G.L. ch. 40B to the Defendant Locustfield, LLC.

JURISDICTION

2. This court has jurisdiction pursuant to M.G.L. ch. 40B.

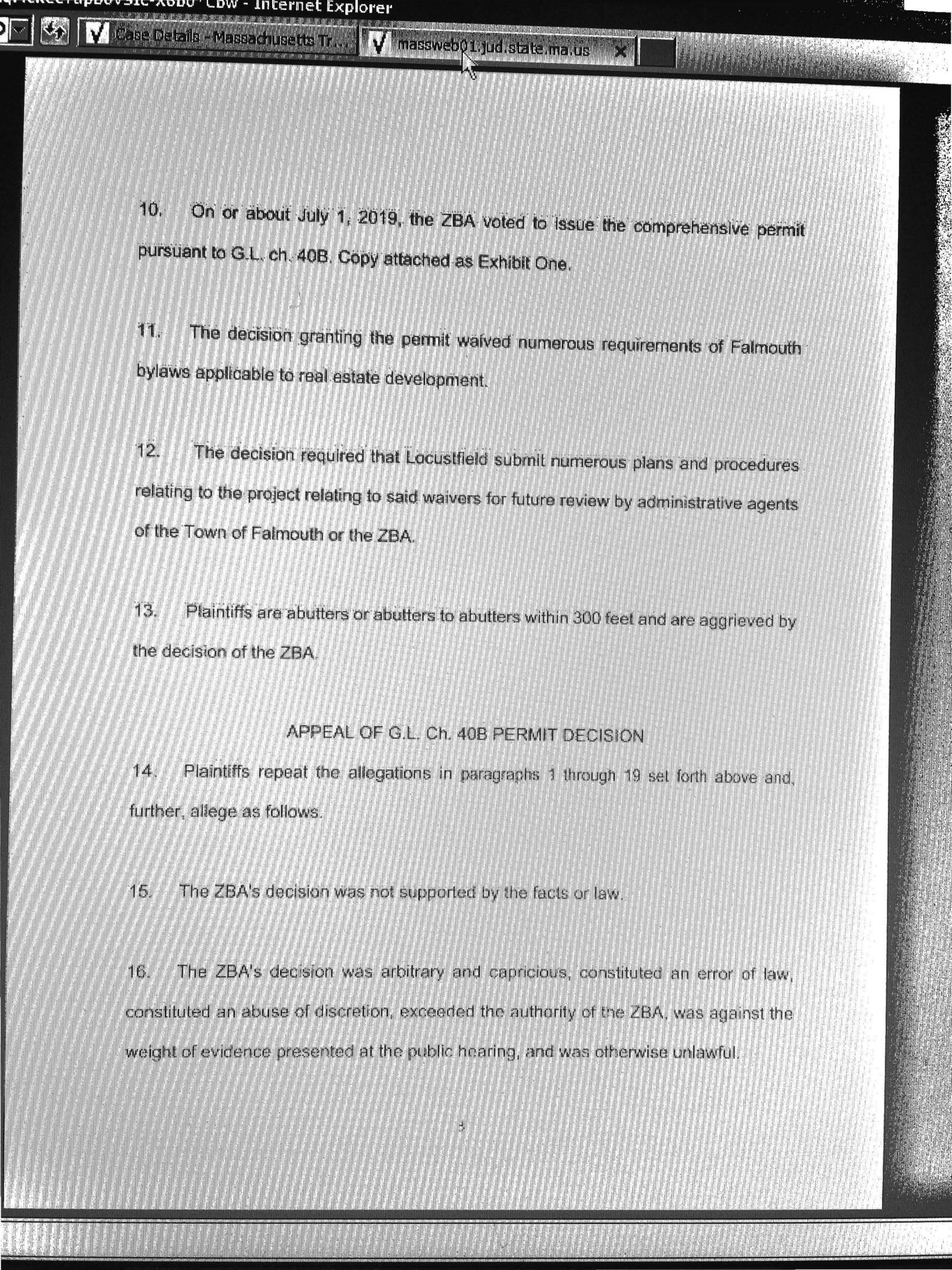
PARTIES

3. Plaintiff William Marston is an individual and owns a property located at 426 Locustfield Rd, East Falmouth, Massachusetts 02536.

4. Plaintiff Joseph Benio is an individual and owns a property located at 440 Locustfield Rd, East Falmouth, Massachusetts 02536.
5. The Defendants Terrence J. Hurrie, Kenneth Foreman, Edward Van Kueren, Gerald Potamis, Robert Dugan, James T. Morse, and Mary Barry are individuals and are the members of the Falmouth Zoning Board of Appeals ("ZBA") with an address of 59 Town Hall Square, Falmouth, Massachusetts 02540.
6. The Defendant Locustfield, LLC ("Locustfield") is a limited liability company with an address of 150 Timothy Bourne Cartway, East Falmouth, Massachusetts 02536.

FACTS

7. The Defendant Locustfield applied to the ZBA for this issuance of a comprehensive permit to be allowed to build 12 detached dwellings on an approximately four acre parcel of land in Falmouth which has a utility easement on approximately 1.25 acres of the parcel.
8. The required lot size in the applicable zoning district is 80,000 square feet to protect water resources
9. The required lot width in the applicable zoning district is 200 linear feet to protect water resources



10. On or about July 1, 2019, the ZBA voted to issue the comprehensive permit pursuant to G.L. ch. 40B. Copy attached as Exhibit One.

11. The decision granting the permit waived numerous requirements of Falmouth bylaws applicable to real estate development.

12. The decision required that Locustfield submit numerous plans and procedures relating to the project relating to said waivers for future review by administrative agents of the Town of Falmouth or the ZBA.

13. Plaintiffs are abutters or abutters to abutters within 300 feet and are aggrieved by the decision of the ZBA.

APPEAL OF G.L. Ch. 40B PERMIT DECISION

14. Plaintiffs repeat the allegations in paragraphs 1 through 19 set forth above and, further, allege as follows.

15. The ZBA's decision was not supported by the facts or law.

16. The ZBA's decision was arbitrary and capricious, constituted an error of law, constituted an abuse of discretion, exceeded the authority of the ZBA, was against the weight of evidence presented at the public hearing, and was otherwise unlawful.

17. The ZBA's decision unlawfully postpones a determination of substance with regard to multiple determinations by approving the permit application, but requiring the submission of multiple later plans.

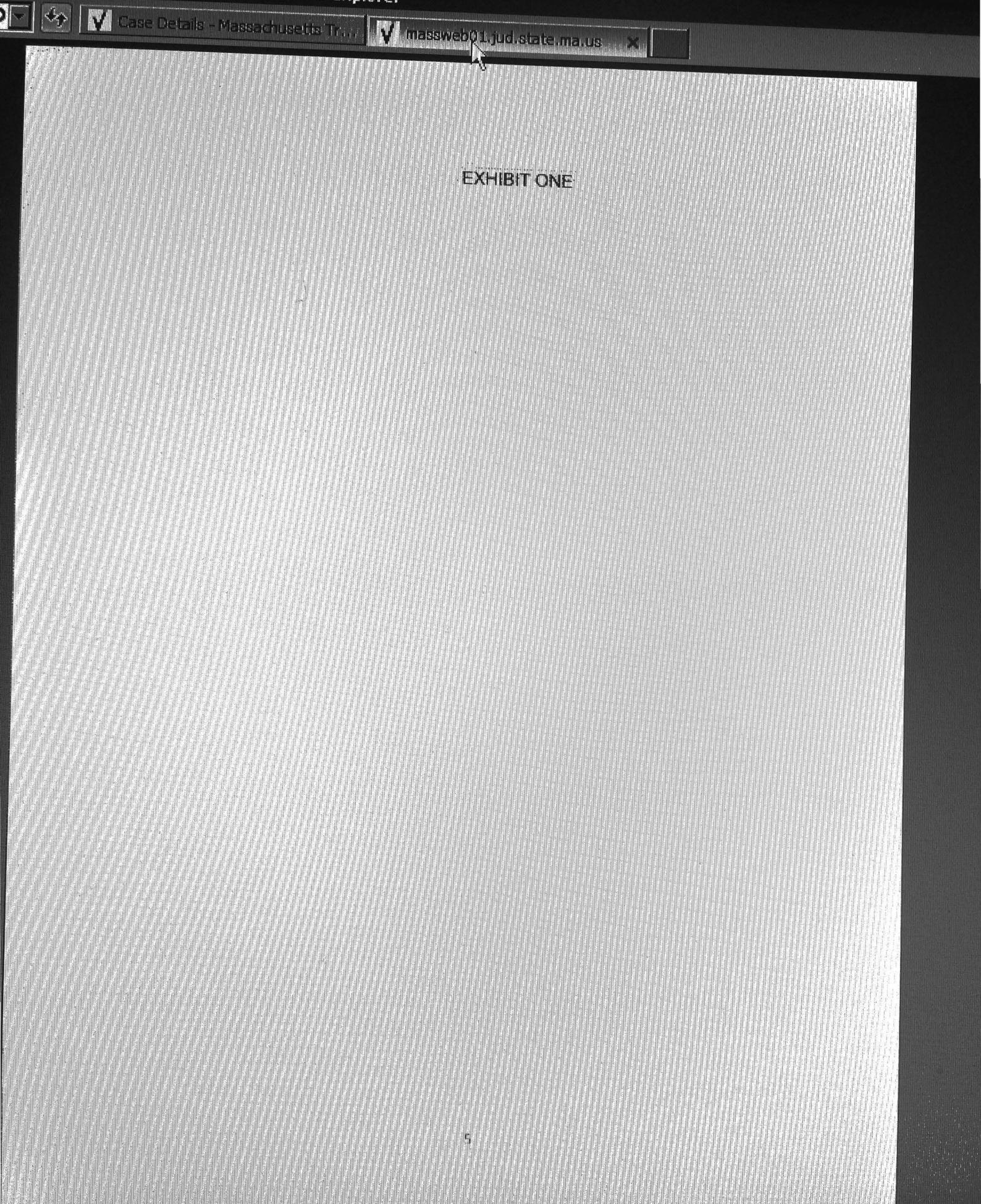
WHEREFORE, Plaintiffs request that this court enter judgment as follows:

- a. That the decisions of the ZBA were:
 - i. in excess of the ZBA's authority or jurisdiction,
 - ii. based upon error of law,
 - iii. made upon unlawful procedure, and/or
 - iv. unsupported by factual evidence.
- b. Issue an Order:
 - i. reversing the decision, and
 - ii. remanding for the issuance of a decision denying the application.
- c. Provide such other relief as this court deems meet and just under the circumstances.

Respectfully submitted,



Paul Revere, III
(BBO #636200)
Law Offices of Paul Revere, III
226 River View Lane
Centerville, Massachusetts 02631-2
(508) 237-1620





TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO:

006-19

APPLICANT/OWNER:

Locustfield, LLC

150 Timothy Bourne Cartway, East Falmouth, MA

SUBJECT PROPERTY:

430 Locustfield Road, also known as "O" Locustfield Road, (Lot 2),
Hatchville, Massachusetts

Assessor's Map:

Map 27, Section 02, Parcel 011, Lot 002

DEED/CERTIFICATE:

Book# 31810 Page# 349

SUMMARY:

A Comprehensive Permit, with Conditions, is granted, according to findings, conclusions, requirements, and statements contained throughout this Decision, read in its entirety.

PROCEDURAL HISTORY

1. An application was filed on February 6, 2019, with the Zoning Board of Appeals, for a Comprehensive Permit, under M.G.L. Ch. 40B, to construct 12 detached dwelling units, 3 of which will be affordable, at "O" Locustfield Road (Lot 2), East Falmouth, Massachusetts (the "Premises").
2. Notice was duly given, as required by M.G.L. Ch. 40 A, § 9, by publication in a local newspaper of general circulation, and mailed postage prepaid to the parties in interest, deemed by the Assessor's office, to be all persons affected by said petition, as they appear on the most recent tax list.
3. The hearing was opened on March 7, 2019. Board members Terrence J. Hurrie, (Chairman), Kenneth H. Foreman (Vice Chairman), Robert Dugan (Member), and Gerald Potamis (Associate) were present. Mr. Dugan was appointed Acting Clerk. Mr. Potamis was appointed voting member for the hearing. The Chairman announced that the Board had only four members present for that hearing. Edward Van Keuren (Member), was absent on March 7, 2019, but reviewed the record, and submitted a Certification, pursuant to M.G.L. c. 39, Section 23D, that he reviewed the video and transcript of the meeting, dated April 16, 2019.

4. Subsequent hearings were held on April 18, 2019, and May 23, 2019. Kenneth H. Foreman (Vice Chairman), was absent on May 23, 2019, but reviewed the record, and submitted a Certification, pursuant to M.G.L. c. 39, Section 23D, that he reviewed the video and transcript of the meeting, dated June 13, 2019.

Deliberations began on June 13, 2019 and continued on June 27, 2019; all dates were announced, and posted in the Town Clerk's office, and on the Town website.

The Board advised attorney Moynihan that Terrence J. Hurrie was absent from the meeting on June 27, 2019, and that if she consented to a vote, there would be four members voting on the petition: Kenneth H. Foreman, Edward Van Keuren, Robert B. Dugan, and Gerald Potamis. Ms. Moynihan consented to the Board proceeding with the vote on June 27, 2019.

5. The documents and information received by the Zoning Board of Appeals, are on file in the office at Town Hall, as set forth below:

Letters/E-mails from Abutters/interested Parties

- Letter from Cape Cod Commission, dated March 6, 2018 (sic), signed by Patty Daley, Deputy Director
- Letter from Joanne Briana-Gartner, 456 Locustfield Road, dated March 11, 2019
- Letter from Judith S. Jacobson, Deputy Director & General Counsel, Massachusetts Housing Partnership, dated August 21, 2018, regarding 587 Gifford Street, provided as an example
- March 7, 2019 letter from Michael F. Schulz, Schulz Law Offices, LLC, 1340 Main Street, Osterville, MA, with:
 - Exhibit 1: Quitclaim Deed for 456 Locustfield Road, dated April 25, 1996
 - Exhibit 2: Quitclaim Deed for 440 Locustfield Street (sic), dated October 28, 2005
 - Exhibit 3: copy "Plan of Land in Falmouth "Teaticket", Mass., by Wm M. Warwick & Assoc. Inc., Box 801, No. Falmouth, Mass, dated September 8, 1987, ANR subdivision control dated September 15, 1987
 - Exhibit 4: "This map shows the location of the Water System's wells and tanks" (GIS map, undated)
 - Exhibit 5: "Falmouth Zoning Board of Appeals to take up affordable housing project", Article from Cape Cod Times, by Christine Legere, dated March 5, 2019
- April 6, 2019 letter from Katherine McMullen, 471 Locustfield Road
- "Locustfield LLC-Rebuttal" letter signed by Christopher J. Alves, dated 3/30/19, Tom Swift, dated 3/30/18(sic), John Burke, 364 Locustfield Rd, dated 4/1/19, Raymond Burke, 404 Locustfield Rd, dated 4/1/19, William Marston, dated 3/22/19, Mary Jane Marston, dated 3/22/19, Deborah Hewins, dated 3/23/19, Eric Huseizo, dated 3/23/19, Michael Gonsalves, dated 3/22/19, Jay Campbell, dated 3/23/19, Jane Husebo, dated 3/23/19, Martha Holdgate, dated 3/24/19, Deborah Orbach, 474 Locustfield Road, dated 3/20/19, Thomas K. Campbell, 466 Locustfield Road, dated 3/22/19, Theodore H. O'Brien, 49 Mares Pond Dr., dated 3/25/19, Maureen O'Brien, 49 Mares Pond Dr., dated 3/26/19, Jaimes Carvalho, 2 Mares Pond Dr, dated 3/21/19, Barbara E. Beltran, dated 3/24/19, William G. Bento and Beverly A. Bento, dated 3/22/19, Kathryn Scanlon Catanach, 15 Wampum Rd, dated 4/7/19, Charles Cornell, dated 3/20/19, Thomas C. Agresti, dated 4/7/19, Carlos T. Martins, dated 4/7/19, James J. McGuire, dated 4/7/19, Michael Duffany, dated 4/11/19, Christy

Duffany, dated 4/11/19, Irina Arkipova, dated 3/31/19, Sergei Pokrovski, dated 3/31/19, Lindalee Andrews, dated 4/5/19, Frank Carotenuto, dated 4/8/19, Sheila Carotenuto, dated 4/8/19, Laura Catanach, 15 Wampum Rd, with notation, dated 4/8/19, Richard S. Breretw, dated 3/11/19, Richard G. Willies, dated 3/11/19, Donna P. Cohen, 37 Pattee Rd, dated 4/4/19, Ronald M. Stone, dated 3/31/19, Maya Lebedinsky, with notation, dated 4/4/19, Emmett Bleiler, dated 4/1/19, Judith G. McDowell, dated 3/26/19, Adliz Freire, dated 3/26/19, Tina Newcombe, dated 3/25/19, John Molongski, dated 3/26/19, Michael + Sheila Hurst, 490 Locustfield Rd, dated 3/29/19, Michael M. Nickerson, dated 3/21/19, Katelyn Attak, dated 3/22/19, Judith M. Kelley, with comment, dated 3/24/19, Bruce and Frances Baker, 16 Pattee, dated 3/22/19, Amanda Baker, dated 3/22/19, Dale Baker, dated 3/22/19, Gregory + Diane Bertrand, dated 3/23/19, Sofia Kijowski, 27 Wigwam, dated 3/22/19, Nell J. Keras, dated 3/22/19, Charles J. Byrne, dated 3/22/19, Marie Gerrior-Keras, 11 Mares Rd, dated 3-33-19, Laura Nelson, dated 3/17/19, John Kalberg, dated 3/17/19, Joe Crocker, dated 3/15/19, Katherine McMullen, dated 3/11/19, Thomas Agresti, dated 3/11/19, Lynn Parks, dated 3/11/19, Herbert N. McAdams III, dated 3/24/19, Lydia McAdams, dated 3/24/19, and Noreen K. Byrne, dated 3/22/19

- Letter from Kenneth Gartner, 456 Locustfield Rd(sic), dated 4/3/2019
- Letter from Barbara Beltran, 75 Harriette Road, dated 4/16/19
- Opposition letter, date stamped received 4/16/19 (immediate abutter)
- Letter from Bob & Fran Spadafora, 54 Mares Pond Drive, dated April 1, 2019

Letters/E-mails/Information from Applicant/Representative(s)

- Application form date stamped Feb 06, 2019
- "Agent Authorization", signed by Daniel Macrone, Manager of Locustfield, LLC, dated 1/29/10
- "Re-create sense of community", article from Cape Cod Times, posted 4/7/19, submitted by Laura Moynihan by email, dated 4/17/19
- April 17, 2019 letter with attached "To: Zoning Board of Appeals, Town of Falmouth" (in support), with 72 signatures (11 of the signatures also appeared on the March 7, 2019 submission).
- April 16, 2019 letter from Laura M. Moynihan, with attached By-Law sections
- "0 Locustfield Road-Locustfield LLC Comprehensive Permit Introduction", copy of Laura M. Moynihan's presentation to the Board on March 7, 2019, date stamped received Mar 11, 2019
- March 7, 2019 letter from Laura M. Moynihan, re: waiver from subdivision regulations
- March 7, 2019 letter from Michael J. Borselli, President, Falmouth Engineering , Inc., 17 Academy Lane, Suite 200, Falmouth, MA.
- March 7, 2019 letter from Laura M. Moynihan, re: waiver from rear setback for proposed lot 2
- March 7, 2019 letter from Laura M. Moynihan, with
 - October 31, 2018 email letter from Patty Connolly, 102 Falmouthport Drive, Teaticket, MA
 - October 30, 2018 email letter from Joe Deoliveira, 800 Falmouth Rd, Unit 101-A, Mashpee, MA
 - October 31, 2018 email letter from Mark Lane, 419 Palmer Ave, Falmouth, MA
 - November 3, 2018 email letter from Rob Pacheco, 78 Chase Rd, Falmouth, MA
 - October 30, 2018 email letter from David and Jessica Durfey
 - November 1, 2018 email letter from Richard Augusta
 - October 30, 2018 form letter signed by Kevin Cerce, 917 E. Falmouth Hwy, C, Falmouth, MA

- October 30, 2018 form letter signed by Garrett Callahan, 917 E. Falmouth Hwy, E. Falmouth, MA
- October 30, 2018 form letter signed by Melissa Melanson, 917 E. Falmouth Hwy, E. Falmouth, MA
- October 30, 2018 form letter signed by Christopher M. Roberts, 16 Figuerido Way, Teaticket, MA
- October 30, 2018 form letter signed by Richard Macrone III, 670 East Falmouth Hwy, E. Falmouth, MA
- October 30, 2018 form letter signed by Susan J. Augusta, 366 Hayway Road, E. Falmouth, MA
- October 30, 2018 form letter signed by John D Augusta, 55 Alexander Booker Road, E. Falmouth, MA
- October 30, 2018 form letter signed by Daniel Figueiredo, 20 Sandwich Road, Teaticket, MA
- October 30, 2018 form letter signed by Julene Augusta, 51 Oyster Shell Lane, E. Falmouth, MA
- October 30, 2018 form letter signed by Nancy Macrone, 688 E. Falmouth Highway, E. Falmouth, MA
- October 30, 2018 form letter signed by Melissa M. Keefe, 66 Vidal Avenue, E. Falmouth, MA
- October 30, 2018 form letter signed by John Rogers Augusta, III, 522 Old Meetinghouse Road, E. Falmouth, MA
- October 30, 2018 form letter signed by Richard Macrone, 688 E. Falmouth Highway, E. Falmouth, MA
- October 26, 2018 letter from Joanne O'Sullivan, president of Falmouth Housing Trust, P.O. Box 465, Falmouth, MA
- July 27, 2018 letter from Edward Curley, on behalf of the Affordable Housing Committee
- March 4, 2019 letter from Michael J. Borselli, "Re: Site Distance Observations -Locustfield LLC"
- March 4, 2019 letter from Laura M. Moynihan, response to Town of Falmouth Water Department Memo, dated February 26, 2019
- March 4, 2019 letter from Laura M. Moynihan, response to Falmouth Department of Public Works Engineering Division, dated February 27, 2019
- Copy of M.G.L. Ch. 40B, Section 21, with 760 CMR 56.02 (continued) definition "Local Board", date stamped received Mar 4, 2019
- "Falmouth Engineering, Inc., Runoff Calculations: Locustfield LLC-August 3, 2018, 25-Year 1-Hour Storm Event, Rational Method, for Drainage Area #1 and #2, stamped by Michael J. Borselli, stamped received Feb 06, 2019
- "Locustfield Estates, Project Description", stamped Received Feb 06, 2019
- January 25, 2019 letter from Catherine Racer, Department of Housing & Community Development, to Susan L. Moran, Chair
- "Lottery Process, Locustfield Estates, East Falmouth, Massachusetts, "DRAFT", stamped received Feb 06, 2019
- "Eligibility Requirements Locustfield Estates-Affordable Housing Unit, "DRAFT", stamped received Feb 06, 2019
- "General Information Locustfield Estates Three (3) Affordable Housing For Sale Units, "DRAFT", stamped received Feb 06, 2019

- "Quitclaim Deed" for 0 Locustfield Road, East Falmouth, MA, dated October 31, 2017
- "Quitclaim Deed" for 0 Locustfield Road, East Falmouth, MA, dated January 29, 2019
- Copy of Falmouth GIS, with locus highlighted, print date February 20, 2018, stamped received Feb 06, 2019
- January 29, 2019 certificate of organization of a Limited Liability Company, signed by William Francis Galvin, Secretary of the Commonwealth of Massachusetts
- "Water Main Extension Agreement and Easement to Serve Beach Plum Path, East Falmouth, Barnstable County, Massachusetts" (draft) date stamped Received Mar 4, 2019

Letters/Referrals/E-mails from Town Departments

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department.

- Engineering letter dated February 27, 2019 and March 6, 2019
- Conservation Commission no comment, dated 2/8/19
- Board of Health e-mail letter dated March 12, 2019
- Water division letter dated February 26, 2019, with attached "Water Main Extension Agreement and Easement" with Trustees of the Nye's Park Professional Offices Trust, (as an example), and "Town of Falmouth, Department of Public Works, Utilities Division, Standard Plans and Specifications For the Construction and Installation of Water Distribution and Waste Water Collection Systems", revision dated August 23, 1999
- Assessors no comment
- Fire Department, letter dated February 14, 2019
- Planning, no comments, dated April 18, 2019
- Email from Noreen Stockman, ZA, dated February 20 and 21, 2019
- "February 12, 2019 Old Water Room – Department Meeting 0 Locustfield, Hatchville – Proposed 00B"; notes from staff meeting, prepared by Ashley DeMello
- November 19, 2019 letter from Susan Moran, Chair, Board of Selectmen, to Alana Murphy, Department of Housing and Community Development
- "Certification Pursuant to G.L. c. 39, Section 23D", prepared and signed by Edward T. Van Keuren, dated April 16, 2019, and filed with the Town Clerk on April 16, 2019
- "Certification Pursuant to G.L. c. 39, Section 23D", prepared and signed by Kenneth H. Foreman, dated June 13, 2019, and filed with the Town Clerk on June 14, 2019

Plans submitted by Applicant/Applicant's Representative

- Section Town of Falmouth GIS map, showing that the locus is not within the Coastal Pond Overlay Districts, stamped received Mar 07, 2019

- "Elevations, Floor Plans, Deck, for '3 Bedroom Dwelling, with garage", pages 1-5, by David McLean, Architectural Design Service, dated 11/9/18
- "Typical Landscape Plan", L1.0, prepared by ML Curadossi Landscape Design, Boston, MA, dated 2/7/18
- "Site Plan, Lot 2 Locustfield Road- Unit 2", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18, rev. dated 4/1/19
- "Septic System Details", Lot 2 Locustfield Road- Unit 2", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- "Site Plan, Lot 2 Locustfield Road- Unit 1", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- "Septic System Details", Lot 2 Locustfield Road- Unit 1", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- "Site Plan, Lot 2 Locustfield Road- Unit 3", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- "Septic System Details", Lot 2 Locustfield Road- Unit 3", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- "Site Plan, Lot 2 Locustfield Road- Unit 4", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- "Septic System Details", Lot 2 Locustfield Road- Unit 4", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- "Site Plan, Lot 2 Locustfield Road- Unit 5", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- "Septic System Details", Lot 2 Locustfield Road- Unit 5", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- "Site Plan, Lot 2 Locustfield Road- Unit 6", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- "Septic System Details", Lot 2 Locustfield Road- Unit 6", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- "Site Plan, Lot 2 Locustfield Road- Unit 7", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- "Septic System Details", Lot 2 Locustfield Road- Unit 7", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- "Site Plan, Lot 2 Locustfield Road- Unit 8", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- "Septic System Details", Lot 2 Locustfield Road- Unit 8", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- "Site Plan, Lot 2 Locustfield Road- Unit 9", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- "Septic System Details", Lot 2 Locustfield Road- Unit 9", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- "Site Plan, Lot 2 Locustfield Road- Unit 10", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18

- "Septic System Details", Lot 2 Locustfield Road- Unit 10", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- "Site Plan, Lot 2 Locustfield Road- Unit 11", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- "Septic System Details", Lot 2 Locustfield Road- Unit 11", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- "Site Plan, Lot 2 Locustfield Road- Unit 12", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- "Septic System Details", Lot 2 Locustfield Road- Unit 12", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- "Plan & Profile", by Falmouth Engineering, dated 7/23/18, 2/28/19, 4/1/19, 5/13/19
- "Definitive Plan of Land", by Falmouth Engineering, dated 8/6/18
- "Drainage Area Worksheet", by Falmouth Engineering, dated 8/1/18
- "Standard Details", by Falmouth Engineering, dated 7/23/18, rev dated 2/28/19

Hearings were held on March 7, 2019 April 18, 2019, and May 23, 2019, with deliberations on June 13, 2019 and June 27, 2019. Minutes of the hearings are available at the Town Clerk's office and in the Zoning Board of Appeals' records. The Petitioner was represented by Attorney Laura M. Moynihan, 17 Academy Lane, Suite 1, Falmouth, MA. Two immediate abutters (Marston, 426 Locustfield Road and Bento, 440 Locustfield Road) were represented by Attorney Michael F. Schulz, Schulz Law Offices, LLC, 1340 Main Street, Osterville, MA.

FINDINGS

The Zoning Board of Appeals carefully considered the facts and evidence submitted for the hearing, and made the following findings:

The subject site is located at 430 Locustfield Road, also known as "0" Locustfield Road (Lot 2), Hatchville, Massachusetts (the "Premises"), and comprises 178,063 square feet (4.09 acres) of area, in the Agricultural A zoning district and the Water Resource Protection District (Long Pond). The westerly portion of the lot, comprising 55,360 square feet, consists of an easement for the benefit of Cape & Vineyard Electric Co. and the New England Telephone Co. The Premises is currently vacant and undeveloped. The Premises is in close proximity to Falmouth High School, and is sited within an area improved by single family dwellings.

According to the last published Subsidized Housing Inventory (SHI) by the Department of Housing and Community Development (DHCD), dated September 14, 2017, the Town of Falmouth has 6.4% affordable housing. The Town does not satisfy any of the statutory and regulatory exemption thresholds outlined in Chapter 40B and 780 CMR 56.00.

The December 2018 Housing Production Plan (HPP) for the Town of Falmouth identified the need for affordable housing, including homeownership opportunities and barrier free units. This HPP established a production goal of 256 affordable units over the next five years, emphasizing the shortage which "threatens the character and viability of the community", and labeling it a crisis.

single car garage will be attached to each dwelling. There will also be parking in the individual driveway for an additional vehicle, providing parking for 2 vehicles per unit.

The Applicant has consented to erect a 6-foot tall stockade fence along the northerly and southerly property sidelines, beginning at Locustfield Road and terminating between Lots 4 and 5, and Lots 9 and 10. The abutters to the north and south could continue the fence to the electric easement. Due to concerns about abutters extending the fence off their property, as well as being able to properly match the fencing, Town Counsel recommended that the Applicant fence to the easement.

Cape Cod Commission has recommended that natural mature vegetation be maintained where possible. The Applicant has proposed primarily foundation drought-tolerant planting for landscaping.

The lot coverage by structures on each lot, will range from 15.1 to 21.5%, which is within the by-right or Special Permit range that the Town may grant. The lot coverage by structure/paving/parking on each lot will range from 17% to 25.5%; which is within the maximum 40% allowed. Changes have been made to the plans so that all units comply with the district's 10-foot rear yard setback.

Sight distance from the Premises looking left (north) on Locustfield Road is reported to be 320 feet. Sight distance from the Premises looking right (south) on Locustfield Road, is reported to be 375 feet. Both distances exceed minimum site distance requirements. The posted speed limit in the area is 25 mph.

The proposal does not comply with certain zoning By-Law provisions. As provided in Chapter 40B, the Applicant has requested waivers from these provisions to which it does not comply.

The abutters to the proposal expressed concerns about the following:

1. Current traffic speeding on Locustfield Road, and the issue of adding vehicles to this situation, coupled with the lack of sidewalks on Locustfield Road. Where the proposal was to add only 12 new housing units, the Board did not require a traffic study.
2. The proximity of proposed new dwellings to abutters. The plans were amended to provide that no dwelling was closer to a lot sideline than the district minimum, and lighting would be dark sky compliant.
3. The Board was very sensitive to the nature of the neighborhood, and the change that the increase in density would bring. However, under the mandate of M.G. L. Ch. 40B, the Zoning Board of Appeals' actions are constrained. The proposed density is also within the parameters of the Town's approved Housing Production Plan, which projected four units per acre, and encouraged multi-family development.
4. Water quality issues, given the proximity to Mares Pond and Long Pond. All septic systems are moved out of the DEP's Zone C of contribution. Falmouth's Board of Health anticipates accepting traditional septic systems for this development.
5. Fencing along the side property lines. The Board agreed to the fencing to preserve privacy for the proposed development and abutters.
6. Safety in the area of the electric easement.
7. Lack of mature vegetation. While much vegetation will be lost, due to the narrow lot, and provisions for a roadway, dwellings and septic systems; fencing and landscaping will be installed.

DECISION:

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals (herein referred to as the "Board") being of the opinion aforesaid, and acting under the provisions of Massachusetts General Law, Ch. 40B, § 20-23, and CMR 760.56.00, voted 4 to 0, following a motion made by Mr. Potamis, and seconded by Mr. Van Keuren, to grant a Comprehensive Permit, with conditions, under M.G.L. Ch. 40B, Sect 20-23, for the construction of twelve single-family dwellings, three of which will be affordable, in perpetuity, to households whose income is not more than 80% of the area median income, as determined by HUD and DHCD, at 430 Locustfield Road, also known as "0" Locustfield Road, (Lot 2), Hatchville, Massachusetts, Assessor's Map 27, Section 02, Parcel 011, Lot 002. To the extent permitted by law, preference for the sale of affordable units shall be given to first time homebuyers that are Falmouth residents, employees of the Town, or within the Town, or who have children attending town schools. This Comprehensive Permit shall be subject to the following conditions:

1. Where this Comprehensive Permit is made specifically under M.G.L. Ch. 40B, Sect 20-23, allowing the override of local zoning (density), there shall be no as-of-right changes made to the subject property. Any changes requested shall be properly submitted to the Zoning Board of Appeals, as provided for under M.G.L. Ch. 40B.
Board voted 4 to 0 to grant.
2. The construction shall be substantially as shown on the plans submitted and reviewed by the Board, as follows:
 - A. "Elevations, Floor Plans, Deck, for 3 Bedroom Dwelling, with garage", pages 1-5, by David McLean, Architectural Design Service, dated 11/9/18
 - B. "Typical Landscape Plan", L1.0, prepared by ML Curadossi Landscape Design, Boston, MA, dated 2/7/18
 - C. "Site Plan, Lot 2 Locustfield Road- Unit 2", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18, rev. dated 4/1/19
 - D. "Septic System Details", Lot 2 Locustfield Road- Unit 2", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
 - E. "Site Plan, Lot 2 Locustfield Road- Unit 1", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
 - F. "Septic System Details", Lot 2 Locustfield Road- Unit 1", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
 - G. "Site Plan, Lot 2 Locustfield Road- Unit 3", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
 - H. "Septic System Details", Lot 2 Locustfield Road- Unit 3", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
 - I. "Site Plan, Lot 2 Locustfield Road- Unit 4", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
 - J. "Septic System Details", Lot 2 Locustfield Road- Unit 4", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
 - K. "Site Plan, Lot 2 Locustfield Road- Unit 5", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18

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- L. "Septic System Details", Lot 2 Locustfield Road- Unit 5", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- M. "Site Plan, Lot 2 Locustfield Road- Unit 6", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- N. "Septic System Details", Lot 2 Locustfield Road- Unit 6", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- O. "Site Plan, Lot 2 Locustfield Road- Unit 7", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- P. "Septic System Details", Lot 2 Locustfield Road- Unit 7", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- Q. "Site Plan, Lot 2 Locustfield Road- Unit 8", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- R. "Septic System Details", Lot 2 Locustfield Road- Unit 8", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- S. "Site Plan, Lot 2 Locustfield Road- Unit 9", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- T. "Septic System Details", Lot 2 Locustfield Road- Unit 9", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- U. "Site Plan, Lot 2 Locustfield Road- Unit 10", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- V. "Septic System Details", Lot 2 Locustfield Road- Unit 10", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- W. "Site Plan, Lot 2 Locustfield Road- Unit 11", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- X. "Septic System Details", Lot 2 Locustfield Road- Unit 11", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- Y. "Site Plan, Lot 2 Locustfield Road- Unit 12", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18
- Z. "Septic System Details", Lot 2 Locustfield Road- Unit 12", prepared by Falmouth Engineering, 17 Academy Lane, Suite 200, Falmouth, MA, 7/27/18,
- AA. "Plan & Profile", by Falmouth Engineering, dated 7/23/18, 2/28/19, 4/1/19, and 5/13/19
- BB. "Definitive Plan of Land", by Falmouth Engineering, dated 8/6/18
- CC. "Drainage Area Worksheet", by Falmouth Engineering, dated 8/1/18
- DD. "Standard Details", by Falmouth Engineering, dated 7/23/18, rev dated 2/28/19

Board voted 4 to 0 to grant.

3. A six-foot tall wood stockade fence shall be installed along both the northerly and southerly lot side lines, between the Premises and 426 Locustfield Road, and 440 Locustfield Road, running from Locustfield Road to the Cape & Vineyard Electric Co. easement. The fence may be stepped down at Locustfield Road, to insure that no site distance is impeded. The fence shall be maintained, in perpetuity, by 430 Locustfield Road ("0" Locustfield Road) Homeowners Association. Installation of the fence shall be completed prior to the issuance of a building permit for any residential dwellings.

Board voted 4 to 0 to grant.

4. The Applicant is directed to work cooperatively with the Town of Falmouth, to determine if temporary construction access can be achieved from Gifford Street, via a curb cut and access over Town land, and over the Cape & Vineyard Electric Co. easement, for the duration of the construction process.
Board voted 4 to 0 to grant.

5. The Applicant has stated that the roadway will be designed to meet Town standards, with the possibility of the Town accepting the road in the future. Falmouth engineering requires installation of appropriate drainage measures during construction. The roadway shall be installed and inspected according to Falmouth's subdivision road protocol, per Article VII: § 305-35, 36, 37, 38, 39 and 42. Required inspections shall be scheduled directly with Falmouth Engineering.

The Town would be obliged to maintain any water main installed for this project. As such, the Town necessarily seeks to have the water line installed to Town standards. The Applicant shall install the water main as shown on the project plans, prior to any Occupancy Permit for the Project. The Applicant shall also work cooperatively with the Town to secure an approval from Eversource, to extend the water main, to effect a looping of the water main through the easement to Gifford Street for reliability, pressure and flow. This extension of the water main shall be installed by the Applicant, to the westerly lot line at the Town-owned land, prior to commencement of phase 2 of the development, if an approval to extend through the easement is secured within 9 months from either the expiration of the 20-day appeal period for the Comprehensive Permit, with no appeal filed, or if an appeal is filed, the resolution of that appeal. The Town shall connect to the water main, and continue the water line from the westerly property line of the Premises to the Town's water main on Gifford Street, at its cost and expense. The Applicant shall comply with Falmouth water department rules and regulations.

The Applicant shall install a stop sign at the entrance of the roadway at Locustfield Road, as approved by the DPW.
Board voted 4 to 0 to grant.

6. Water line construction shall be in accordance with the Town's water department. Water department fees and requirements shall be the responsibility of the developer. Prior to the issuance of building permits, the Applicant shall conduct a hydrant flow test to determine available flow and pressure to fight a fire, and provide the results to the Water Superintendent and Fire Chief. The procedure for flushing, disinfecting and pressure testing of the water main shall be approved by the Town's Water Superintendent.
Board voted 4 to 0 to grant.

7. The maximum height of the dwellings shall be 24 feet.
Board voted 4 to 0 to grant.

8. Construction hours shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Friday. Saturday hours shall be limited to 8:00 a.m. to 4:00 p.m. No Sunday or holiday hours, absent an emergency. All construction vehicles shall remain strictly on the subject property, and not park.

on abutting streets. Construction vehicles are prohibited from idling on or near the Premises, outside of construction hours. During construction, efforts shall be undertaken to minimize impacts on abutters, including securing dumpsters, stabilizing soil to guard against erosion from a rain event, and ensuring that public roadways are kept clean. Trees straddling the property line shall be assumed to be jointly owned, and cannot be damaged without prior written approval of both parties.

Board voted 4 to 0 to grant.

9. The Applicant shall contact the Town's Police Department to discuss coordination of traffic during construction. The Applicant shall provide to the Police, Building Department, and ZBA, the name and phone number of a project contact individual throughout the duration of the construction process, to insure that any questions or concerns, including those of abutters and residents, are timely managed.

Board voted 4 to 0 to grant.

10. The development shall be limited to a maximum of twelve (12) single family detached dwellings, with a maximum of 36 bedrooms. Three of the dwellings shall remain, in perpetuity, affordable to eligible purchasers, whose annual income shall not exceed 80% of the area median income, as determined by the United States Department of Housing and Urban Development. The three affordable dwellings shall be eligible for inclusion in the Town's SHI maintained by DHCD. Any increase in the number of bedrooms is a violation of the Zoning By-Law, and this Comprehensive Permit.

Board voted 4 to 0 to grant.

11. There shall be no further division or subdivision of the Premises, or the creation of additional housing units or any other structures without further approval of the Zoning Board of Appeals in the form of an amendment to this Decision.

Board voted 4 to 0 to grant.

12. The three affordable year round (not seasonal) family ownership units shall be included in the Subsidized Housing Inventory (SHI), and regulated as a Local Initiative Petition/ Local Action Unit (LIP LAU) through DHCD, subject to a regulatory agreement, fair marketing, and income guidelines. Certification of compliance with affordable housing regulations shall be submitted annually to the Zoning Board of Appeals (ZBA), and Falmouth's affordable housing designee. This certification shall include documentation that each affordable ownership unit is occupied by a qualified owner, as their principal residence. Homeownership association fees should be adjusted to be reduced for the affordable units. The affordable units shall remain affordable in perpetuity, with a use restriction recorded at the Barnstable County Registry of Deeds, and shall survive sale. Any resale of an affordable unit shall be properly managed by an affordable housing specialist, and reported to the ZBA and the Town's affordable housing designee, and include the fact that any future owner is subject to all terms and conditions listed herein.

Board voted 4 to 0 to grant.

13. The three affordable units shall be designated as Lots 2, 5 and 10. One affordable unit must be completed per three market rate units. A Certificate of Occupancy for the final market rate unit may not be issued, until all affordable units have been completed, and granted a Certificate of Occupancy. All dwellings shall have the same exterior appearance and construction quality, and be in conformance with the approved plans.
Board voted 4 to 0 to grant.

14. One unit shall be constructed to be handicapped accessible. The developer shall notify the Board as to which unit is constructed as handicapped accessible.
Board voted 4 to 0 to grant.

15. The dwelling on Lot 7 shall be relocated, so that the septic system is placed outside the DEP's Zone C of contribution. Updated plans shall be submitted to the Zoning Board of Appeals, prior to the application for a building permit for this lot.
Board voted 4 to 0 to grant.

16. A certified plot plan, including building and lot dimensions for each structure, shall match architectural plans, and shall be provided to the ZBA, in order to receive a sign off for a building permit.
Board voted 4 to 0 to grant.

17. Final As-Builts for all structures shall be provided to the ZBA.
Board voted 4 to 0 to grant.

18. Applicant shall provide a bus stop shelter at Locustfield Road.
Board voted 4 to 0 to grant.

19. Applicant shall provide a side walk along the southerly side of the roadway.
Board voted 4 to 0 to grant.

20. Landscaping shall be installed as presented, in accordance with the landscape plan "Typical Landscape Plan", L1.0, prepared by MT Curadossi Landscape Design, Boston, MA, dated 2/7/18, with all plant materials maintained in good health. Any material substantially diseased or dead shall be removed and replaced, within two years of the final Certificate of Occupancy. Any mature trees should be maintained, if possible.
Board voted 4 to 0 to grant.

21. Lighting shall be provided at the roadway entrance, as well as pole lights at the driveways, and front doors. Any further lighting, as required by building code, may be installed, but must be dark sky compliant. Spot lights are prohibited. Any lighting installed to a side or rear of dwellings, as may be required to meet code, shall be dark sky compliant, and not shed light off the subject lot.
Board voted 4 to 0 to grant.

22. Construction shall be in accordance with any requirements of Town Engineering, including items specifically delineated in the letter dated March 6, 2019. Stormwater must be managed on-site; no increase in stormwater runoff is allowed. Per Engineering's request (March 6, 2019), prior to the start of roadway construction, the Applicant will file a refundable construction bond, in the amount of \$1,500, with the Town, relative to work being done within the Town's right-of-way, as shown on the site plans. Engineering shall be requested to inspect the work underway, and Engineering shall recommend refunding the bond upon completion, in accordance with approved plans. Engineering signoff is required prior to the issuance of any building permit for this project.

Board voted 4 to 0 to grant.

23. Drywells shall be added to the plans, including installation plans, for a two-foot diameter, two-foot deep drywell, installed in a two-foot envelope of crushed stone, connected to roof leaders, 15-feet off both rear corners of each house. Each homeowner shall be apprised of said installation, to insure maintenance and preservation of drywells for the future, and this shall be added to the Homeowners Association documents.

Board voted 4 to 0 to grant.

24. The Town is specifically not waiving fees associated with construction, including, but not limited to the water line, water tapping sleeve and valve, water meters, and engineering, such as the bond for the street opening permit(s), and building department fees.

Board voted 4 to 0 to grant.

25. Any waiver not specifically granted herein, is denied.

Board voted 4 to 0 to grant.

26. The waiver from subdivision regulations, specifically

- a. 305-24A grade at intersection
- b. 305-24D length of dead end street
- c. 305-34 requirement for street lights
- d. 305-40 trees planted on both sides of right-of-way, at maximum 40-foot intervals.

Board voted 4 to 0 to grant.

27. The waiver from the requirement for a minimum 45,000 square foot lot in Agricultural A zoning district.

Board voted 4 to 0 to grant.

28. The waiver from the requirement for a minimum 80,000 square foot lot in the Water Resource Protection zoning district.

Board voted 4 to 0 to grant.

29. The waiver from the requirement for a minimum lot width of 150 feet in the Agricultural A zoning district.

Board voted 4 to 0 to grant.

30. The waiver from the requirement for a minimum lot width of 200 feet in the Water Resource Protection zoning district.
Board voted 4 to 0 to grant.

31. The waiver from the requirement for a minimum lot frontage of 100 feet in the Agricultural A zoning district.
Board voted 4 to 0 to grant.

32. The waiver from the requirement for a minimum lot frontage of 150 feet in the Water Resource Protection zoning district.
Board voted 4 to 0 to grant.

33. The waiver from the requirement for a minimum front yard setback of 25 feet for all lots except Lot 4.
Board voted 4 to 0 to grant.

34. The waiver from the requirement for lot coverage exceeding 20% for Agricultural A district for Lots 2, 3, 5, 11 and 12, and Water Resource Protection District for Lots 2,3,4,5,6,7,8,9,10, 11 and 12.
Board voted 4 to 0 to grant.

35. Any deviation, no matter how minor, from plans submitted and approved, shall be submitted to the Board for approval, prior to implementation of said change. The Zoning Administrator may make a determination as to whether the changes are minor in nature, and can be approved administratively, or whether they will require a hearing for an amendment. Changes made prior to an approval may be subject to a full hearing, and are at risk that the ZBA may deny the request, subjecting any unapproved construction be ordered undone.
Board voted 4 to 0 to grant.

36. The Applicant is required to provide a 1.) Regulatory Agreement and Declaration of Restrictive Covenants for Ownership Project, and 2.) an Affordable Housing Deed Rider specifying that Affordable units shall remain affordable in perpetuity, and 3.) a Declaration of Trust for the Homeowners Association. These collective documents shall be provided to the Zoning Board of Appeals for approval by Town Counsel, prior to the issuance of any building permit, and subsequently recorded at the Registry of Deeds in Barnstable. The Applicant, as a Limited Dividend Organization, is limited in its profits under G.L. c. 40B, and any excess profits shall be paid by the Applicant, and distributed as required by the Subsidizing Agency, and in accordance with applicable law, regulations and guidelines
Board voted 4 to 0 to grant.

37. Final Lottery agent, Lottery Plan, and Marketing Plan shall be submitted to the Zoning Board of Appeals, prior to issuance of a Certificate of Occupancy
Board voted 4 to 0 to grant.

38. Prior to the issuance of any Certificate of Occupancy, the Applicant shall enter into a Monitoring Agreement, to be approved by Town Counsel. All costs associated with the monitoring shall be borne by the Applicant, until the sale of the last affordable unit, and thereafter by the sellers of the affordable units. A copy of all financial information by the monitoring agent shall be provided to the Zoning Board of Appeals after the initial round of sales.

Board voted 4 to 0 to grant.

39. This Comprehensive Permit shall be a master permit which shall subsume all local permits and approvals normally issued by local Boards, other than as specifically enumerated in a condition. The Board of Health and Conservation Commission are excluded from this provision.

Board voted 4 to 0 to grant.

40. This Comprehensive Permit shall not be transferred without express written approval of the Zoning Board of Appeals.

Board voted 4 to 0 to grant.

41. Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant, and the Applicant's successors and assigns.

Board voted 4 to 0 to grant.

42. Prior to starting work under the Comprehensive Permit, the Applicant and general contractor shall hold a preconstruction meeting with the Building Commissioner, Town Engineer, and Department of Public Works representative to review the requirements to insure compliance with this Decision.

Board voted 4 to 0 to grant.

43. This permit shall not take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days has elapsed after the decision had been filed in the office of the Town Clerk with no appeal being filed, is recorded in Barnstable Registry of Deeds, or that an appeal has been filed within such time. [Any person exercising rights under a duly appealed Comprehensive Permit does so at risk that a court may reverse the permit, and that any construction performed under the permit may be ordered undone.]

Board voted 4 to 0 to grant.

44. This permit shall lapse three (3) years from the date on which this decision is filed in the Town Clerk's office, if a substantial use of the Comprehensive Permit has not sooner commenced, except for good cause, as determined by the Zoning Board of Appeals.

Board voted 4 to 0 to grant.

45. The Zoning Board of Appeals reserves the right to recall the Applicant, with such notice as the Board deems proper, to discuss unresolved matters of concern.

Board voted 4 to 0 to grant.

Action: The Board of Appeals, by the signature below, certifies the vote of the Board, as follows, for the above referenced hearing:

Vote: 4 to 0 to grant the Comprehensive Permit for 430 Locustfield Road, also known as "0" Locustfield Road, (Lot 2), Hatchville, Massachusetts, Assessor's Map 27, Section 02, Parcel 011, Lot 002, as represented to the Board, based on the Findings stated herein, and with the above stated Conditions.



Kenneth H. Foreman, Vice Chairman,
Falmouth Zoning Board of Appeals

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TOWN CLERK
JUL 1 2013 PDX/LLB
RECEIVED

Date Filed With Town Clerk